IN THE

Supreme Court of the United States,

October Term, A. D. 1922.

No. 701.

THE BOARD OF TRADE OF THE CITY OF CHICAGO, et al.,
Appellants.

vs.

CHARLES F. CLYNE, United States District Attorney, et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Appendix to Brief for Appellants.

HENRY S. ROBBINS,
Counsel for Appellants.

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INDEX.

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APPENDIX TO BRIEF FOR APPELLANTS

[In all the extracts appearing in this Appendix, portions thereof have been italicized to enable the court to more readily see the more essential parts of these extracts.]

EXTRACTS FROM THE REPORT OF THE INDUSTRIAL COMMISSION CREATED BY ACT OF CONGRESS.

By Act of Congress, June 18, 1898, a commission, called the "Industrial Commission," was created, to be composed of five members of the Senate, five members of the House of Representatives, and nine other persons, "who shall fairly represent the different industries and em-

ployments," to be appointed by the President by and with the advice and consent of the Senate.

This Act made it the duty of this Commission (among other things)

> "to investigate questions pertaining * * * to agriculture, * * * and to business, and to report to Congress *and to suggest such legislation as it may deem best upon these subjects,"* and "to furnish such information and suggest such laws as may be made a basis for uniform legislation by the various States of the Union."

Authority was conferred upon it to send for persons and papers and to administer oaths. The term of the Commission was originally two years, but was subsequently extended until February 15, 1902.

(Act of 1898, Public—No. 146.)

On January 15, 1901, this Industrial Commission prepared a partial report on the Distribution of Farm Products (Volume VI of its reports), parts of which follow:

> "The first fact to be recognized in the survey of the American system of distributing farm products is that it is essentially a speculative system from beginning to end—speculative in the sense that after the products pass out of the producers' hands and until they pass into the consumers' control there is not a moment nor a stage in the distributive movement during which the one who has legal control over the property in question does not run the risk of a rise or fall in the value of the property. * * * In brief, the risks of distribution are shifted by both producers and consumers upon the distinct class of speculators known as distributors, who make it a business to take such risks and to divide them up among themselves on the basis of net profit on capital and cost of business capacity. This, in the final analysis, is the underlying fact in the system of distributing farm products in the United States. (pp. 5 and 6.)
>
> * * * *The facts examined show that in the course of the past* 25 *years there has been a constant*

tendency toward a reduction in the difference between what the producer receives and what the consumer pays. In other words, the existing commercial system of distribution of farm products inevitably tends, under equitable laws and responsible uses of capital, *to cost society a decreasing proportion of the value of the farm products.* With the reduction of risks of trade the reduction of rates is inevitable. (p. 6.)

* * * The shipper simply ascertains by what ways and means the transfer from producer to consumer can be effected most economically. To err is to eliminate himself. * * * An attempt to impose even a triflingly small excess of charges on cotton or grain at one distribution point will be taken advantage of by competing points. * * * Distribution of our main crops proceeds, on the whole, by the lines of least outlay between producers and consumers. (pp. 6 and 7.)

* * * A conspicuous feature of the American grain market is the existence of a large visible supply during the greater portion of the year between harvests. Grain, especially wheat, passes out of the farmers' hands early in the season, for good and sufficient reasons, and remains piled up as surplus stock in the country for distribution during the next nine months as the consuming world may require it.

The depressing effect of this large stock of visible wheat upon the market, from the producers' point of view, is inevitable; but it relieves the consumer and the trader, who stands next to the consumer, from anxiety as to where his future supply is to come from. This is one of the causes for the low level of farm prices of wheat under the present methodical system of collecting the crop soon after the harvest and holding it ready for dispersal to whatever part of the world may want it most. *Another factor in depressing American wheat prices is the fact that three-fourths of the world's wheat supply comes upon the market within* 3 *months out of the* 12, *causing a congestion of stock, which determines the price for the other* 9 *months of the year.* * * * The consumer, however, shares the advantage with the distributor who carries the stock and disperses it as required at such rates of compensation as the competitive

conditions of modern trade, together with his individual foresight, enabled him to get for his services. *It can not be shown that the producer is the victim of an uneconomical system of grain distribution.* (p. 12.) * * *

* * * Why has commercial distribution in the United States become so largely identified with a speculative class of trading capitalists? The answer is, that it has been found best for the producing and the consuming interests of the community that the risks of distribution should be localized in a separate commercial class whose members are in a position to inform themselves as to all the factors, past, present, and prospective, affecting the future course of prices. If the risks of distribution fell upon the farmer, it would increase materially the risks of capital required and thus raise the rate of interest he should have to pay as producer, because increased risks always raise the rate of interest. This would increase the cost of production and consequently tend to reduce consumption by rise of price to consumers. * * * Now it is the speculator who has to decide in advance on the price at which a regular supply will in all probability be forthcoming from producers in sufficient quantity to meet the regular requirements of the consumer. One speculator might place the future market price too high, another too low, but as a class they correct and check one another. It is to their interest as distributors to call forth all that the consumer will take, and no more. *Speculators as a class are, therefore, interested primarily in a correct judgment*, as much so as is either the producer or the consumer of the product in which the trader speculates. (p. 28.)

* * * The scope of this task of forming a judgment upon world-wide conditions, and forming it accurately enough to stake millions of capital upon it, is perhaps the heaviest hazard in our whole modern economic organization of society. But some class of investors must do it, or consumers must pay a higher price for their product, and producers must be content to enter the market with fewer competitors ready to buy and carry their surplus. Producers and consumers together, without the speculative mechanism at work, would have to divide the risks of dis-

tribution between them. Neither of these interests is prepared to do this. Sound commercial policy is the best served by a rational division of distributive labor, in which economic freedom and economic responsibility are equally respected.

The economic services of speculative agencies engaged in distributing farm products are threefold:

1. They localize industrial risks among a commercial class whose special function it is to distribute surplus supplies over deficit times and places in such a way as to lessen the uncertainty of producers and consumers.

2. They relieve producers and consumers from carrying a whole year's stock, enabling the former to convert his crop promptly into cash capital and the latter to supply himself as his periodical needs may require without enhancing prices beyond the ordinary rate of risks and returns of such capital investments.

3. Competition of speculative dealers tends more than any other force to reduce profits of these agencies to a minimum per unit of commodity handled. * * * (p. 29.)

WHAT MAKES FARM PRICES? (p. 29.)

* * * The price which the local buyer pays rises or falls with the demand in the wholesale centers to which the local buyer ships his supplies. The local buyer receives his prices from the wholesale centers through the dealers or commission men. The price to be paid the producer in the country for a given day is determined by the trade interests in the large receiving centers on the basis of commercial conditions. They act either individually or collectively in sending out their quotations to local buyers, stating the prices at which they are willing to receive products of the character in which they deal.

* * * *Another fact makes it practically impossible for any important center of distribution to depress farm prices.* Even the wholesale dealer who depends on the daily rural supply to meet the demand of the retail trade is obliged to take into account the prices which other receiving centers are paying for the same products. * * * In fact, the greatest force in the distributive system making for reduction of distributing expenses of handling farm prod-

ucts is the competition of the wholesale markets in large distributing centers for the products of the farm originating in the territory from which two or more cities draw their daily supplies. A lower or a higher price in one of these markets than is offered in any other turns the tide in the direction of the other and practically eliminates the supply from the former market. *A wholesale market which keeps itself out of line with other markets simply takes its own life by attempting to maintain an unduly low farm price.* (p. 30.)

WHY WHEAT PRICES STAY LOW.

* * * The market price of Columbia River wheat, like that of our surplus wheat generally, is fixed by the deficiency in the foreign supply from domestic sources of each country. All deficit countries go into the world market to get a portion of the surplus from such countries as have wheat to spare. If the deficit countries together have a large shortage they become all the more active bidders for the world's surplus wheat. If that surplus is less than usual the bidding is all the more active. *Whether prices for American wheat are higher or lower depends altogether on such things as are beyond our own control at the time.* A large European deficit and a large American surplus may not raise prices at all. A small European deficit and a small American surplus may likewise leave prices where they have been. Only in those years when it happens that there is a shortage in deficit countries large enough to create an extraordinary demand for our surplus do our prices really show much rise. * * * (p. 34.)

* * * *The question to be answered in this discussion is: 'Does speculation tend to lower prices?' If so, are the fluctuations of such a character as to injure the interests of the farmer as against those of the dealer or speculator?*

That speculation tends to lower prices permanently even the most outspoken opponents of the system of dealing in futures have not undertaken to charge. What is generally urged is that the professional short seller, by his sales of fictitious wheat or cotton, creates a fictitious oversupply in the market, which is just as instrumental in depressing prices

as would be an abnormally large supply of actual wheat thrown on the market by the farmer.

* * * To sum up: *While the short seller may at times be in a position to depress future prices by creating a fictitious oversupply, when it comes to spot prices, i. e., the only prices which are of any practical interest to the farmer, the 'bear' appears as a buyer and thereby, if at all influencing prices, must raise them.*

* * * *Even if we were to admit that the speculative purchases and sales for future delivery could affect current spot prices, the opposite effects of the transactions of the bull and the bear would balance each other.* * * * It may be urged that the same quantity of wheat, which would have been sold but once by the farmer, is now offered first by the farmer to the short seller, next by the short seller to the long buyer, and finally by the latter again to somebody else, thus swelling the apparent supply and tending to lower prices. But in all such cases the fictitious supply has been met by a fictitious demand, which have all been balanced long before the month for which the contract had been concluded has arrived. (pp. 189 and 190.)

Our analysis thus shows that as far as there is a speculative influence in depressing prices, it is not exercised by the much abused short, but by his opponent, the bull. (p. 190.)

* * * *Spot prices may and may not move in sympathy with the future prices, according to conditions of actual demand and supply.* * * * *This explains why spot prices are sometimes above future prices for the same month, although, as a rule, the latter are higher than the former by the amount equal to the cost of storage of the grain in the warehouse.*

* * * *The professional speculator is in the market not for the purpose of either depressing or raising prices.* He is as ready to make money on a rise as on a fall in prices. In either case he will try to ascertain what the probable tendency of the market is before he embarks in any undertaking. (p. 190.)

* * * On the contrary, prices of wheat futures are as a rule somewhat above spots by the amount equal to the cost of storage, insurance, etc. (p. 191.)

* * * *This leads to the conclusion that so far from being the cause of low prices short selling is rather a consequence,* in the sense that it is indulged in only when it is thought that the natural tendency of the market is such as to favor a trend of low prices. * * * *According to the law of supply and demand, prices of wheat and cotton should be lowest immediately after harvest time, when the supply of these products is the highest during the year.* If speculation has any effect upon the prices of these commodities, it should reveal itself in the form of some kind of a modification of that law. If the charges of those who are opposed to 'future' dealings are justified—if the effect of speculation is to depress prices to the producer—then we should find prices under a speculative system to be much lower at the time succeeding the harvest, as compared with prices at other seasons of the year, than under a nonspeculative system. (p. 192.)

(The commission refers to tables disproving this charge.)

* * * According to Professor Bemis 64 per cent of the total wheat crop is received at Chicago in the course of the 4 months from August to November. (p. 193.)

* * * The average price for the same three months (September, October and November) for the twenty years (1840-1859) of the nonspeculative period is $1.284, the annual average $1.3358—that is, under the nonspeculative system the farmer received a lower price than the average price prevailing during the rest of the year. *That again does not look as though the farmer has been hurt by speculation.* On the contrary, with the wide dissemination of knowledge of the condition of crops at home and abroad and of prices ruling in the principal markets of the world, which is the direct result of organized speculation, the farmer has evidently been more able to take advantage of favorable conditions than he was before. (p. 194.)

* * * That is, *under speculation, while fluctuations of prices are more frequent, they do not reach so wide extremes as they used to.* That is another beneficent result of the wider dissemination of knowledge of conditions brought about by speculation as

well as other influences working in that direction, but which we can not discuss here. (p. 195.)

* * * Again, if the charges of the opponents of speculation in futures are true, that the object and effect of speculation is to depress the prices paid to the producer by fixing the 'future' price at a uniformly lower rate than the spot, we should expect that the September and October 'futures' in the month of July should be lower than July spot prices. What do we find to be the fact? Out of 15 years represented on the diagram there were only 6 years when July prices for September or October delivery were below the July spot prices, in the other 9 years the relation between the 2 sets of prices being reversed.

This, of course, is no more due to the kindly solicitude of the speculator for the welfare of the farmer than the opposite state of affairs, to any hidden conspiracy on the part of the former against the interests of the latter. It is all the result of *concurrent forces and conditions which go to make up the totality of the market* and which serve rather as a guide to the speculator in his movements than as a result of his action. (p. 204.)

* * * The depression in prices of agricultural products during the few years previous to 1898 has been no doubt responsible for most of the opposition to speculation in 'futures.' The several interests connected with the raising and marketing of these products feel that 'something is wrong,' and in search for the cause of the evil naturally turn against speculation as the most prominent factor in modern business life. *That the condemnation of speculation is the result of misunderstanding and bitter feeling rather than intelligent research* may be seen from the fact that it is quite frequently made on conflicting grounds, according to the interests involved. (p. 222.)

* * * As we have attempted to show, *it is a mistake to represent speculation in futures as an organized attempt to suppress prices to producers*:

First. Because every short seller must become a buyer before he carries out his contract.

Second. Because, as far as spot prices are concerned, the short seller appears as a buyer and not

as a seller, and therefore, against his own will, is instrumental in raising prices.

Third. Because, as far as 'future' prices are concerned, the 'bull' in speculative buying counteracts the effects of speculative selling of the 'bear.'

Fourth. Because the 'bull' in his realizing operations when depressing prices, is counteracted by the opposite effect of the 'covering' movements of the 'bear,' the two sides thus keeping the market price about where it would be kept in the long run if instead of 'bulls' and 'bears' there would be ordinary legitimate buyers and sellers.

Fifth. Because, as has been shown, future sales are not made at a uniformly lower price than the corresponding spot price, but on the contrary are on the average a little above spot prices to meet the cost of storage, interest, and other charges.

Sixth. Because, as has been shown, neither the 'bears' nor the 'bulls' are uniformly on the winning side, but are about equally losers and winners, thus proving that one is about as important and influential a factor in the market as the other.

Seventh. *Because evidence believed to be conclusive has been presented showing that, under speculation, prices prevailing at the time when producers dispose of the greater part of their products are greater in comparison to the rest of the year than they were before the advent of modern speculation.* (p. 223.)

* * * A further comparison of prices may be made in a somewhat different form. We may first compare prices at different times at the same place, as, for example, present (spot) and future prices at Chicago; we may, secondly, compare prices at different places such as Chicago and Liverpool. *The purpose is to show that such differences in time prices are not caused by speculation, but can be adequately accounted for by the natural condition of supply and demand;* and that differences in *place prices* can be explained just as adequately by the expenses of distribution. By time prices are of course meant prices based on difference in time at a given place; and by place prices, prices based on difference in places at the same time. (p. 223.)

* * * Chicago is the supply end of the wheat trade, just as Liverpool is the demand end." (p. 224.)

On February 10, 1902, this Industrial Commission made its final report to Congress (Volume XIX). Its letter transmitting the report is in part as follows:

"* * * This is Volume XIX and is devoted to historical reviews of the subjects to our inquiries, and to 'recommendations for legislation,' with appendixes relating thereto. * * *

In the first place, it was the aim of the Commission to select only the most competent witnesses, although, of course, there were, in the nearly seven hundred examined, a few who sought to be heard, and some of them, perhaps, for personal as well as public reasons. *As a rule, however, the evidence is that of the chief men in business or the heads of business departments,* public officials, leaders of organized labor, *and experts who have given the subjects exhaustive study.* * * *

Besides taking testimony, the Commission has availed itself of much other authentic information, gathered chiefly from official documents of the Nation and the States, from the decisions of courts, and from the researches of experts. * * * It is not presumptuous to say that most students of these reports will find many revelations of business methods and complications of which they knew little before, and will have a liberal education in the economic problems of the day. * * *"

The final report is in part as follows:

"HOW PRICES ARE GOVERNED. (XIX, p. 135.)

* * * A third factor is speculation. Much of the testimony on this subject is conflicting. It is certain that speculation in future prices does have a more or less intimate connection with actual values of farm products, but *no evidence has been conclusive enough to show whether variations of actual values have been caused by speculative variations, or whether speculative changes have been the result of changes in actual market values. Of farm products it is probably correct to say that speculation does not govern prices except so far as the speculative*

prices enable the buyer or seller of actual goods to anticipate the probable course of prices at a future time. If this be a fair statement of the weight of evidence, then the speculative market must be looked upon as a buyer's barometer, which more or less faithfully reflects the estimate of the market. It has not been denied that the producer constantly avails himself of this indicator of values in determining whether to withhold or dispose of his crop. (*Id.* 136.) * * * Grain prices stand in a somewhat different relation to the two branches of the market demand. The domestic demand requires three-fourths of the supply of wheat and nine-tenths of the average annual market supply of corn. The remaining one-fourth and one-tenth, respectively, are required for the foreign demand. *The general level of prices is the result of both demands, foreign and domestic.* The level of prices resulting from the influence of the domestic demand on the domestic supply is always subject to being raised or lowered by the foreign demand. *In this sense the foreign demand for the American surplus fixes the range of prices for the crop as a whole.* Foreign scarcity raises American prices somewhat higher, and foreign abundance depresses prices here by lack of demand. (*Id.* 146.) * * *

XI. PROBLEMS OF GRAIN AND COTTON MARKETING. (*Id.* 177.) * * * SPECULATION IN AGRICULTURAL PRODUCTS.

It has frequently been urged that there should be remedial legislation in order to protect the producer from the speculator. *Dealings in 'futures' have at different periods* since the rise of produce, grain, and cotton exchanges in the United States *been looked upon as one of the chief factors governing the prices of farm products.* That is, speculative agreements as to future values have been regarded as causing a rise or fall in the prices of agricultural products.

This earlier view of speculative trading has been considerably modified by a more complete insight into the relation which speculation bears to commercial methods. It is now more generally held that speculation in its legitimate and normal function is primarily occupied in anticipating the price at which under all circumstances the producers' supply is likely to yield to the consumers' demand. The ad-

justment between these two factors—supply and demand—is all the more delicate because with each recurring year they exhibit more or less elasticity. The positions of producers and of consumers change. The commercial judgment must be recast each successive season and at all stages of the season. This task must be classed among the really valuable services of speculation in distribution.

The three great functions which speculation performs in a free system of trading are, first, to localize the risks of distribution among a special class of experts presumably well informed as to the facts of supply, demand, credit, exchange, and cost of distribution. Second, to relieve producers and consumers alike of the expense and risk of being responsible for a year's production, thus freeing the cash income of both of these economic interests for other uses than those of protecting and providing a long-term supply of utilities. Third, to reduce the profits of trade by ready and active competition among the various speculative interests toward a minimum of cost per unit of commodity handled, by conducting distributive operations on a large scale.

Throughout the East and the West it appears to be the general practice of millers on a large scale, who make contracts for delivering flour in the future, to purchase in the market for 'futures' a corresponding quantity of wheat against the contract for the delivery of flour which they have assumed. This system, as stated by entirely trustworthy representatives of the trade, has been found absolutely necessary in order to prevent the miller from assuming the extraordinary risks of changes in the market value of wheat. Only the more speculative and daring millers would undertake to fulfill future contracts without exercising this precaution of purchasing wheat 'futures.' In considering the question of whether buying and selling of 'futures' is consistent with the welfare of the producer, this aspect of the practice must be regarded as buying and selling insurance against loss.

The economic position of warehousemen in handling agricultural products under the present system is somewhat similar to that of the miller. The warehouseman with a million bushels of grain in storage is obliged in some way to secure himself

against loss from fall in cash prices in the future by selling 'futures' at a price which will cover his outlay. He thus absolutely eliminates that million bushels of grain from the class of risks which the business has to run.

A common evil of the grain, cotton and provision trades is over-speculation. Over-speculation is a result of the attempt to do too large a volume of business on a given amount of cash capital. The amount of cash capital which a trader can command depends very generally on the amount of credit which his bankers are willing to give him. It is therefore largely in the power of these trustees of the community's cash capital to check or favor over-speculation. Any laws that will fix and enforce upon banking institutions the responsibility for extrahazardous uses of funds intrusted to them, whether by their customers or the officers of banks, will go far toward checking over-speculation. (*Id.* 185-6.)

* * * RECOMMENDATIONS. (*Id.* 197.)

* * * We therefore recommend:

1. That the Secretary of Agriculture be given authority— * * *

(b) To fix standard grades for cereals, based on season of growing, quality, and weight per measure, and, when intended for export, to inspect and certify the same. * * *" (*Id.* 198.)

[The report is signed by 15 of the 18 members of the Commission, and contains no recommendation for legislation as to exchanges or the marketing of grain except as above indicated.]

EXTRACTS FROM

TRAITE THEORETIQUE ET PRATIQUE D'ECONOMIE POLITIQUE.

By Paul LeRoy-Beaulieu. Membre de L'Institut, Professeur D'Economie Politique au College de France, Directeur de L'Economiste francais.

Librairie Guillaumin et Cie. Paris. 1896. Vol. 4, pp. 60-64.

(TRANSLATION.)

"*The claim is often made in the United States and in Germany that future trading should be prohibited because it causes low prices of commodities.* It is said that the big volume of selling frightens the owners of commodities into selling at any price. * * * *There is little foundation for this reasoning, for future trading, so far as prices are concerned, tends as much to raise prices as to lower prices—much more often indeed to do the former.* * * *

In itself, future trading no more tends to lower prices than to raise prices. * * * Should future trading be prohibited? There is no sound reason for doing this. * * * The question resolves itself into the question of speculation. Considering all the effects of speculation, both good and bad, is it useful or harmful to society? The answer is certain: *Speculation, after full account is taken of its evils and its benefits, of its advantages and its disadvantages, is one of the forces indispensable to human progress.* * * *

Without in any way denying the abuses which sometimes occur through combinations and speculations, these abuses seem to us far less dangerous than the regulations aimed to prevent them."

EXTRACTS FROM

VOL. 40 OF THE PARLIAMENTARY DEBATES (of England) in 1896, pp. 323 to 335, inclusive.

On May 1, 1896, when Germany was enacting its repressive legislation on future trading, one of the members of the House of Lords stated that certain evidence had been taken at the request of the English Royal Commission on Agriculture, which tended to show that future trading depressed the price of wheat, and asked why this evidence had not been printed; and he concluded with a formal motion for the papers on the subject, whereupon the Earl of Dudley, on behalf of the Government, replied in part as follows:

"Under these circumstances I feel sure that your Lordships will not feel inclined to adopt the suggestion of the noble Lord and appoint a Select Committee to inquire into this subject. * * * Of course there can be no doubt that there has been a *very* large fall in the price of some of the products to which the noble Lord has referred, but I venture to think that it is by no means proved, even after the speech of the noble Lord, that that fall in price is in any way due to the system of which he complains. *To say that price is governed by the laws of supply and demand is merely to use a truism, but it is, I believe, a fact that that law holds good even in the speculative market, and that* the unanimous opinion of the best experts *is that the price in those markets follows and does not lead the price dictated by the laws of supply and demand. In fact, they are of opinion that this system of dealing in 'futures' instead of deteriorating prices, rather tends to equalise them and to counteract the fluctuations that always must exist.* * * * The noble Lord has referred to the many attempts that have been made, chiefly by Mr. Smith and others, to distinguish between purely legitimate speculation and gambling enterprise, but all those attempts to differentiate have failed, and I doubt very much whether it would be possible to draw any distinguishing line of that kind in an Act of Parliament, without running very grave risk of hampering trade and checking legitimate enterprise."

The Prime Ministers also opposed the motion, whereupon it was withdrawn.

EXTRACTS FROM

A TRANSLATED ARTICLE ON THE GERMAN ANTI-BOURSE LAW OF 1896.

By Dr. Georg Wermert. (Appearing in Conrad's Jahrbücher, Jena, 1901. Vol. 77, pp. 793-853. Quotations from pages 828-853.)

(HOW THE 1896 LAW WORKED.)

"* * * Many small traders had, on account of these restrictions, withdrawn from the Bourse. On

the other hand, some big firms found the opportunity of making enormous middleman's profits, since there were no quotations and no future trading. For the whole world will not give up future trading any more than it will give up railroads, telephones and telegraph. Every cargo of grain for which no hedging is possible on the Berlin Futures market will be hedged elsewhere. The state or the city alone is injured where the experiment (of prohibiting future trading) is carried out.

* * * In the Austrian Inquiry it was stated that the price of wheat in Germany by the cessation of future trading, was depressed below the world wheat price level; in confirmation of this statement I wish to call attention to the painstaking and thorough labors of Conrad by which it was proved that *the abolition of future trading did not have the effects on agriculture which were expected*, namely:

1. *Price fluctuations since the cessation of future trading have not decreased. In Vienna, where they have future trading, the price fluctuations are smaller than in Germany.*

2. In the absence of adequate Arbitrage transactions, which depend for their existence on future trading, and lacking any definite price quotations, *the price of grain was depressed below the level of the world price.* For example, wheat in Germany was 23 marks per ton higher in 1898 than in 1897; in Austria, 26 marks higher. Compared with the year 1896, wheat was 40 marks higher in Germany; 49 marks higher in Paris; 78 marks higher in Vienna. *Prior to this time the wheat price had been lower in Vienna than in Berlin. But since the prohibition of future trading the price level in Berlin has fallen below that in Vienna.*

* * * 4. The domestic grain trade has been completely disorganized by the prohibition of future trading, so that capital seeking investments in grain is no longer available in any volume, and therefore the tendency of the market is bearish. * * *

Further, the fact must be recognized that future trading makes it possible for the market to receive a big supply without smashing the price, and to meet a powerful demand without any serious price fluctuations, just because of the large volume of trading

which gives such a place the stamp of a world market place. But if no future trading market is evolved in a place and if the Bourse is limited to a mere local market, then a big supply must have serious influence on the price. Evidently commerce in those articles which come to market in large volume requires different ways and means of marketing from those commodities which are of limited quantities; therefore the natural evolution of business has developed future trading for certain articles, as even the German Bourse; I recall the one at Hamburg for coffee —forced to open there in order not to lose the business to Antwerp and Havre.

* * * To abolish future trading on these grounds—this crowning work of commercial life in modern times—would be like putting out all the fires of a country because by fire often very serious and costly conflagrations have occurred. In the age of world trade and world politics which involves a big balance of trade, it is indispensable to have an Exchange powerful and fully functioning, which is not hampered with unnecessary regulations, just as it is necessary for the army to have cannon and machine guns, although great victories have been won in olden times with plain pieces of ordnance and guns and stone castles. Every age requires its own means and such means as have been developed in the natural course of evolution."

EXTRACTS FROM

Ten Years Regulation of the Stock Exchange in Germany.

By Prof. Henry C. Emery, Professor of Political Economy in Yale College.

"It must be admitted that the German law has proved a double failure. It has also been a fiasco so far as accomplishing its purpose is concerned; and it has produced evil results that were not intended. * * *

The real and supposed evils of speculation may be summed up under three heads:

(1.) The manipulation of prices (in the case of commodities) to the detriment of the consumer or producer. Sometimes it is the dread of corners and the extortion practiced against the consumer which calls out the criticism. More often, however, the criticism comes from the producing interests who claim that the prices received for their commodities are reduced by the supposedly nefarious practices of the short-sellers. * * *

* * * The evils of manipulation are enormously exaggerated. It would be idle to deny that there is any such thing as 'rigging the market,' but it very seldom lasts long enough to injure the farmer or the consumer. The speculators may be hurt by the tricks of their rivals, and the millers or spinners sometimes growl because of the tactics of the dealers in the wheat or cotton markets, but these are interests which know pretty well how to protect themselves. *Certainly no reasonable argument can be made for the claim that speculation reduces prices to the producer. On the contrary, the exact opposite is the case since it reduces greatly the margin between the farm price and the price of the central market.* This however, is not the place for a discussion of the beneficial effects of speculation. It is only necessary to indicate in passing that the first class of evils is largely imaginary and calls for no interference to protect an innocent public."

EXTRACT FROM

The Grain Trade in Practice.

By Otto Jöhlinger, Editor The Berlin Tageblattes. Berlin 1917. 2d Edition, enlarged. Translation ("Die Praxis des Getreidegeschäftes"). Pages 12-13, 297-298.

"* * *INTRODUCTORY.

Hand in hand with the extension of the grain trade into world markets went also a tendency towards uniformity in price-movement, which was promoted by the development of the market news service. While form-

erly the prices in separate provinces and countries were quite different, and price fluctuations were large, today, *thanks to speculation, the time-differences in price and the place-differences in price are leveled down. As a consequence the fluctuations in price are much smaller than formerly,* and between the separate markets of the world as a rule only that price difference exists which represents differences in quality of grain, and transportation costs, tariffs, etc.

* * * SCOPE AND PURPOSE OF FUTURE TRADING.

The circle of interests among grain dealers is very large, and future trading affords a means of reflecting every shade of opinion concerning supply and demand. Hence it is particularly adapted to serving its one great end—insurance against loss by price changes. * * *

Examples of the necessity of future trading in grain may be multiplied, and they show that it is indispensable. *Indeed, they show that it was future trading that finally put the grain trade on a safe basis and removed from it its former speculative character.*"

EXTRACTS FROM

The Movement of Wheat Prices and Their Causes.

By Louis Perlmann. Munich and Leipsic 1914. Translation ("Die Bewegung der Weizenpreisen und ihre Ursachen"). Pages 53-55.

(The So-called Patten Corner, May 1909.)

"The supply (of wheat) at the beginning of the crop year 1908-09 was not much smaller than the 1907-08 supply, and the United States Visible was, in January, 1909, not only greater than in the previous year but also greater than that in 1907 in spite of the bumper crop of 1906. In the face of these statistics the newspapers were unanimous in their opinion of a "Patten Corner" which in January, 1909, was taking a more definite form. * * *

However, it is not merely these statistics of short stocks on farms and with the trade that shows the situation, but also the complete lack of supplies in the hands of the millers. According to many estimates the decrease in these supplies was just as great as in the case of the farmers and the trade, so that there was an actual deficit

of about 7,000,000 tons compared with the usual stock on hand at the beginning of the crop year.

But how was it possible that only one man foresaw this condition? This cannot be exactly accounted for. Probably it rests on the fact that the ratio between Visible supply and total Stocks is not always the same, and that this ratio early in the year 1909 was unusually out of line with average conditions. Everybody was looking only at the statistics of Visible supply, while Patten took into consideration underlying market conditions.

* * * The history of international corners teaches many things. * * * These corners were not artificial price bulges; they were not carried out by artificial control of the market; they were, on the contrary, based on keen forecasts of the actual future market conditions.

* * * Looking back over the past we must say: since a corner is extremely difficult when based on speculation in futures, and is much more easily carried through when based on cash grain, it has come about that speculation in cash grain has grown less and less on the Grain Exchanges. But it seems also quite probable, considering the enormous amount of grain produced and the development of commerce, that a corner, aiming to influence prices by controlling a large amount of grain,—or even aiming to dominate the market with the help of vast sums of capital—can no longer be effected successfully. Every attempt of this kind, and there have been many, has been a failure. * * *"

EXTRACTS FROM

ORGANIZED PRODUCE MARKETS.

By John George Smith, M. A., Assistant Professor and Sub-Dean of the Faculty of Commerce, University of Birmingham, England. Published by Longmans, Green & Co., London, 1922. Pp. 96-145.

"CHAPTER VII.

THE WORK OF THE EXPERT SPECULATOR.

Expert risk taking, or professional speculation, the existence of which is necessary for successful hedging on

the part of genuine traders in the organized produce markets, is a comparatively recent development, owing its growth to the new economic conditions of the last half century. * * * It is in connection with these fluctuations that the new class of speculator originated; and the service it renders to society is that of bearing risks incident to changes in value, in other words, trading risks. * * * The wheat market has ceased to be local. It has become a world market. * * *

Fluctuations in price are, therefore, no longer dependent on local scarcity or abundance, but on world-wide connections and distant conditions which no merchant, however well he knows his own local market, can study sufficiently to justify him assuming the new speculative risks caused thereby. * * * Thus, speculation has become the business of a special group and the speculators, instead of seeking their own markets and moving their own goods, are a new class distinct from producers and merchants. * * * From the point of view of the genuine dealer it is that group in his market which assumes the main risk of changes in value of the produce as it passes from producer to consumer. It is a kind of commercial scouting party sent ahead to discover and report changes in value, and thus to direct trade into those channels along which the greatest efficiency requires it to run.

It has sometimes been advocated by those who wish to curtail what they consider to be the gambling element on the exchanges that dealing in futures should take place only in connection with hedging transactions, and that speculation unconnected with the protection of actual transactions, but merely with the object of obtaining profits from price fluctuations, should be prohibited. This is hardly practicable, and, even if it were, it would so narrow and cripple the market for futures as to destroy its efficiency for hedging purposes. Apart from the difficulty of determining the meaning of orders from outside markets, and much hedging is done in distant markets, it would be impossible, even in the case of contracts concluded within a single market, to ascertain whether the buyer or seller, or both, were hedging or speculating.

The bear speculator is one of the strongest factors in steadying price movements, and in obviating extreme fluctuations. It is not that short sellers actually determine prices. All they do is simply, by the act of selling, to

express their judgment as to what prices will be in the future. If they are mistaken, they pay the penalty for their errors of judgment, by having to enter the market and buy at higher prices. Most people are unduly optimistic; and the higher the price goes the more elated they become. The presence of short sellers resisting this tendency to excessive rise is very salutary; for it makes an excessive rise extremely expensive. At the same time, when the drop takes place, short sellers, to realize their profits, must become buyers in order to cover. In this way, an excessive drop in price is likewise avoided. *Short-selling, therefore, does not unduly depress prices as is often asserted; but it is, instead, a very powerful agent in steadying them.* Over and over again prices are sustained or are put up at the expense of the shorts, who often, when a fall really occurs, hasten to cover before the drop becomes too great, only to succeed in driving the price up to and beyond its former level. *Short-selling is thus a beneficial factor in steadying prices;* and it is by its means that the discounting of serious and unfavorable events does not take the form of a series of sudden catastrophes, but, instead, is spread out over a reasonably long period of time, permitting the real holder of produce to observe what is happening and giving him time to limit his loss if he is caught on the wrong side of the market. *From the constant contests of short-sellers with the bulls a much truer level of prices is evolved than could otherwise ensue.* To quote the Report of Governor Hughes's Committee on Speculation in Securities and Commodities, 'No other means of restraining unwarranted marking up and down of prices has been suggested' anywhere; for the bulls take care of the interests of the farmer and are always looking for an opportunity to send prices up; while the bears represent the consumer, always on the watch to buy at the lowest price possible. * * *

The so-called 'fictitious' wheat or cotton of the short-seller cannot possibly affect the market to the disadvantage of producer or consumer; for the bear must always cover his sales, and in the end support the market by buying. Moreover, without short-selling, arbitrage transactions would be impossible, and in this way again, the beneficent work of the expert speculator would be gravely hindered.

Summing up, then, the services rendered by the class of expert speculators, at least seven may be distinguished as a paramount importance—

(1) By standing ready always to buy or to sell, it provides a continuous market with all the advantages resulting therefrom to both producer and consumer.

(2) By its watchfulness and its use of both official and other information it discounts the future, prevents panics, and spreads over a longer time the consequences of unexpected news, either good or bad.

(3) It regulates the rate at which the crop is consumed; and it helps by its action to reduce the cost of 'carrying' produce.

(4) By arbitrage transactions it levels prices between different markets, thus ensuring that produce shall find its way to where it is required.

(5) It steadies prices through the constant contest between bulls and bears.

(6) It hastens what would otherwise be tedious by smoothing difficulties in the way of necessary movements of produce. It is a creator of what the theoretical economist calls 'time utility.'

(7) Most important of all, it is always ready to supply the other party required in a hedging transaction, whereby, contrary to other forms of insurance in which the risk is jointly shared by several classes, it concentrates upon itself all the main risks of changes in value, and incidentally renders it easier for bankers to finance the movements of produce at every stage from farmer to consumer.

Chapter IX.

Some Evils and Abuses of Speculation.

One of the chief services rendered by expert speculation is the lessening of fluctuations, and the establishment of prices which correspond to the actual conditions of supply and demand all the world over. * * *

So-called excessive speculation on the produce exchanges may be nothing more than a sign of exceptional activity in general trade; but the fact that dealings are in excess of the average may point to a successful resistance to an attempt at manipulation by the saner elements in the market. It is not always correct, therefore, to ascribe to manipulation every sudden increase in dealings for which no reason can be immediately assigned. * * *

Probably no form of manipulation calls forth more condemnation from the general public than the 'corner.' * * *

Corners are not necessarily a result of futures dealing. They are in reality more common in transactions outside the exchanges than within them. Moreover, in the case of wheat and cotton the fact that, at certain periods of the year, only small amounts are available would still render cornering possible apart from any contracts for future delivery. It may well be doubted whether the existing risk of occasional or partial corners on the exchanges is greater than an actual monopoly of wheat under conditions in which contracts for future delivery would not be possible. * * *

Chapter X.

The Influence of Speculation Upon Prices.

Reasons have already been given in support of the assertion that short-selling steadies prices, and that active legitimate speculation, by concentrating risks on experts, tends to narrow the difference between the price paid by the consumer and that received by the producer.

It is proposed now to discuss in greater detail the views of farmers, statisticians, and others, on these points, and to examine in a general way the manner in which speculation influences the prices of those two commodities, cotton and wheat, in which it is most widely employed, and in which it can work out its effects with the smallest interference from outside causes.

It is often asserted that the prices fixed in the speculative markets are unreal because they are determined 'regardless of the law of supply and demand.' This statement probably means nothing more than that the price is not in accordance with some preconceived idea of what it ought to be. * * *

The fact is that prices in the organized markets are determined by the existing supply and demand, but that the existing supply and demand, effective supply and demand, are both speculative. They are dependent on conditions in other markets, and on judgments concerning the future. Hence, future supply and demand, by their influence over present speculative supply and demand, affect prices; but this is the only way in which it is their power to do so.

The speculative demand and speculative supply find expression in offers to buy and to sell, and are, therefore, quite as genuine as ordinary demand and supply. * * * The speculator deals in estimates of future values. This is where the class of critics already referred to goes wrong. They fail to recognize that one main service of speculation consists in the influence it exercises over the determination of prices throughout a range of time in the future. It is not the present price so much as the future price over which it seeks control.

About the year 1894 and 1895, when prices were considerably depressed, the question of the influence of the active operation of a market in futures was widely discussed in England, America and the Continent. Anti-option bills were promoted in more than one American State; the so-called Exchanges Act was passed in 1896, in Germany, to regulate speculation on the exchanges there; *and a committee of the section of Economic Science and Statistics of the British Association reported in* 1900 *on the effects of dealings in futures upon prices, with special reference to wheat. The particular point then under discussion was the assertion that futures tended to depress prices.* This was a natural supposition in view of the prevailing low prices at that time, but the exactly opposite opinion has been maintained in times of high and rising prices, with as little justification in the one case as in the other.

That speculative sellers do not control the market is further borne out by the fact that prices of wheat and cotton rise and fall quite independently of the amount of dealings in futures. If it were true that the influence of these transactions is, on the whole, to depress prices, the greater their volume the lower the price ought to be. It is not easy, or even possible, to get complete figures from all the exchanges in order actually to test the connection, if any, between volume of dealings and price. Moreover, the practice of buying in one market and hedging in another may render the figures taken from a single market not altogether reliable. Yet the fact that there is no correspondence of the kind required in such figures as are available affords sufficient reason for concluding that such a connection does not exist.

There are occasions when short-selling has temporary success in depressing prices, but the cause is then invariably impulsive action on the part of the majority of

the speculators for which no reason can be assigned; and it is independent of the existence of any intrinsic good or evil in short-selling itself. If two or three dealers of known ability and financial strength continuously sell wheat when the general indications point to a rise in price they may succeed in bringing about a fall; for the other speculators in the market may be frightened and may lose their self-confidence, fearing the wisdom and strength of these operators rather than trusting in the indications and in the predictions arrived at by themselves. This is an instance of manipulation by means of a scare; but if the short-sellers are making a mistake the penalty they will be called on to pay will be immense. If, on the other hand, they are correct in anticipating an unexpectedly great supply they will reap a large reward for their superior economic foresight in putting the price where it ought to have been. * * *

It would seem that, at the time the view prevailed that short-selling depressed prices, the main argument of its upholders was that other causes seemed inadequate to produce the low prices then experienced. Further investigation, however, has shown that in the particular cases of wheat and cotton there were additional causes depressing prices which were overlooked at the moment. Yet in one way it may be true that the operation of a future market can depress the general price-level of the produce bought and sold in it, for the cost of handling may be so reduced by the perfection of organization in the market that the price may be lowered to the consumer without a corresponding reduction of price paid to the producer. It must be admitted that in this case the tendency to deprive the producer of his increased proportionate share of the total price paid by the consumer might be one he could not easily resist; *but statistics given in the British Association report do not lend support to the view that the growth of futures markets in wheat has resulted in a remuneration to the farmer less in proportion than formerly.* * * *

Another change in price phenomena directly traceable to speculation is the gentler gradation of the fluctuations. Only second in importance to the fact of the fluctuations themselves and their extent is the question whether the extreme points are reached suddenly or by easy stages. A moment's reflection at once shows that

a speculative system affords the most advantageous means by which this desirable end of easy gradations can be attained. There are always some persons in the market ready to buy as soon as prices begin to fall, and others ready to sell the moment prices begin to rise. Thus, a sudden large change in price is very rare. * * * This development is of great practical benefit, because the public thereby gets early warning of a change in values, and the smaller holders of produce are enabled to unload their stocks, if the market is falling, without the serious loss that they would incur if the price jumped at once to its lowest extreme, while the small purchasers are enabled to buy their supplies before the price reaches its uppermost limit; but the value even to the larger merchants, producers, and consumers, of a graduated price movement is too obvious to require discussion. * * *

Speculation in the organized markets contributes to the regulation of consumption of produce, both in time and in place. Rise in price is the immediate consequence, as already seen, of a conviction on the part of experts that supplies are being too rapidly consumed. In this way the necessary diminution is brought about in the rate of consumption, and the falling off is accurately adjusted to the needs of the case. Similarly, arbitrage dealings ensure the transport of produce, from place to place, in accordance with the requirements of every district. Scarcity in one place, indicated by a rise in price, draws supplies from other places where prices are lower and and demand less pressing. Hence, speculation exercises a directive influence in distribution, and thereby, with its control of markets and prices, it reacts on production and consumption, and not infrequently modifies the nature of new developments in industry and in commerce among the leading nations of the world."

EXTRACTS FROM

SPECULATION IN THE STOCK AND PRODUCE EXCHANGES OF THE UNITED STATES.

By Henry Crosby Emery, Ph. D., Professor of Political Economy in Yale College.

No. 2 of Vol. VII of Studies in History, Economics and Public Law, Edited by the Faculty of Political Science of Columbia University in the City of New York.

"*In the first place, it is desirable to dispose of a more or less prevalent idea that speculative prices are determined 'regardless of the law of demand and supply.' Such an idea is based on a complete misconception of the nature of value. The more free the competition between buyers and sellers, the more minutely is price regulated by demand and supply, and nowhere is competition more free than on the exchange.* (p. 113)

Prices on the exchanges, however, are (and must be) determined by the existing demand and supply. But the existing demand and supply are both speculative, and depend for their strength on the conditions in other markets and on the expected conditions of the future. It is in this way that distant and future demand and supply affect prices, by affecting the speculative demand and supply here and now, and it is only in so far as they do determine the speculative market of the moment that they have any influence on price.

The speculative demand and supply are just as real as any other, and are expressed in genuine offers to buy and sell goods. (pp. 114-5)

* * * It is customary to attribute any price which is unfavorable to a particular class to the machinations of speculators. In this country speculation is charged with the responsibility for a large part of the fall in prices of agricultural products since the complete adoption of speculative methods a quarter of a century ago. Its tendency is supposed to be always towards a depression of price. Under other circumstances, however, it is blamed for always enhancing prices above the 'natural' rate. (p. 118)

This question as to the effect of speculation in depressing prices, which has been the chief argument of the anti-optionists in Congress, has been treated somewhat fully by the writer in another place, and calls for only a brief summary here. *The familiar argument is, that short selling is a selling of products that do not exist, in addition to those that do, and so furnishes a corresponding increase of supply, which necessarily depresses prices; and then figures representing enormous sales are brought forward as statistical proof. These sales, however, are also purchases, and the question of their amount is of no importance.* They represent a speculative demand as well as a speculative supply, and the real question is whether the speculative forces on the short side are stronger than those on the long side of the market, and whether the speculative supply or demand is warranted by actual conditions. (p. 119)

A comparison of the degree of depression with the amount of future sales shows that increased speculation has always accompanied higher prices. * * *

What then is the effect of speculation on prices? Primarily, as has been shown, it *acts to concentrate in a single market all the factors influencing prices. In this way a single price is fixed for the whole world.* By means of arbitrage transactions former differences of price in different markets have been leveled. Of this there can be no doubt. The same should be true in regard to differences of time as well as of place. Since a great change in either the demand or supply of any commodity is less unexpected, it has far less influence on price, when it finally arrives, than it would have under a non-speculative system. (p. 120)

Perhaps the most potent influence in preventing wide fluctuations is the much maligned short-seller. It is he who keeps prices down by his short sales, and then keeps them strong by his covering purchases. This is especially true in the case of inflation followed by panic. If it were not for strong short selling when the market becomes inflated, prices might rise to almost any extent before the final crash. Now the rise tends to be checked by the efforts of shrewd operators to take advantage of the

inflation. On the other hand, when prices begin to tumble, they are kept from going as low as they otherwise would by the purchases which the shorts have to make to cover their contracts. *Thus prices at both ends of a panic are less extreme than they would be without short selling.* (p. 121)

There is one important change in price phenomena which may be traced directly to speculation as such, because no other cause could be equally influential in this direction. This change is not the greater stability of prices, but the greater graduation in price fluctuations. Even if it were to be admitted (for the sake of argument) that prices in the long run show as wide fluctuations as formerly, it is important to notice whether or not these extreme points are registered suddenly or by steady gradations. It needs little more than the mere statement to show the advantage of a speculative system in this matter. There are always some shorts ready to buy in as prices first fall, and some bulls ready to sell out as prices first rise, and these forces are very effective in graduating prices. *So perfectly does the system work that a sudden change in price, of any importance, is very rare. The fact is so apparent from a glance at the daily market news as to render statistical illustration unnecessary. This is almost entirely the work of speculation.* (p. 129.)

* * * Speculation, then, tends to equalize consumption over a long period by causing economy in anticipation of a shortage, and free use in anticipation of bountiful crops. (p. 145.)

The tendency of speculation is to lessen market fluctuations and to establish prices which correspond to actual conditions of demand and supply in all places. * * * Manipulation, however, is not a mysterious process, but rests on intelligible economic laws. Confining the discussion now to the market for produce, it may be said that a speculator can influence price in only two ways. He must either buy or sell the commodity himself, or he must persuade others to buy or sell. (p. 171.)

But the short-seller has already exerted his influence by his sales. If he wishes the price to fall further, he must still continue to sell at constantly

lower prices, or must start a selling movement among others.

It is true, however, that with sufficient capital a speculator may be able to bring about such a result. He may at times sell a commodity in such enormous quantities as to reduce the price. The question is whether he will be likely to attempt it. * * * Nevertheless it sometimes may occur that a big operator, or group of operators, temporarily succeed in putting the market down and in making the covering purchases so quietly and skillfully that the price is not materially raised. The mistake is in thinking that a successful operation of this kind can be easily or frequently accomplished. (p. 172.)

Indeed it may be doubted if such an operation can ever be successful without the favor of luck, such as the appearance of unexpected crop conditions, to support the manipulator at the end. * * * Speculators are equally ready to profit from a rising or a falling market. They know that in the end the conditions of actual demand and supply determine the price, and are not induced to forego acting on their opinions because of large transactions on the other side. A price movement may prove to be incorrect, because the speculative judgment is fallible, but such a movement must, in the main, represent the real market opinion on the condition of demand and supply.

A particular form of manipulation, which has excited far more adverse comment than, from the economic point of view, it deserves, is the 'corner.' (p. 173.)

At the same time the speculative corner is temporary and, so to speak, incorporeal. In the speculative market it is not wheat that is cornered, but 'September wheat' or 'May wheat.' It is necessary only to control the supply till the short-contracts mature. *Consequently the price remains high only for the last few days of the delivery month, while in other markets the price is little affected.* It has already been noted that during the September wheat corner in Chicago in 1888, the New York price rose only a few cents. *The consumer, then, is not perceptibly injured.* The only direct loser is the speculator, but indirectly trade is temporarily disarranged by the abnormal condition of the market.

A successful corner is of very rare occurrence. Most attempts in this direction have miserably failed. Furthermore, such attempts are becoming more and more infrequent, and success more difficult. It is a common saying in both the grain and cotton markets that the corner is a thing of the past. (p. 174.)

It may be said that, if big manipulations are seldom successful, there is a countless succession of small movements up or down due solely to speculative conditions. This is true enough. *In a sense all speculation is manipulation.* There is always more or less effort to affect prices by purchases or sales, *but the equilibrium of all these forces registers the opinion of the market as a whole.*" (p. 176.)

EXTRACTS FROM

Speculation and the Chicago Board of Trade.

By James E. Boyle, Ph.D., Extension Professor of Rural Economy, College of Agriculture, Cornell University, New York. The Macmillan Company, 1920.

"The demand side is the sensitive side of the market, showing the consumer's ultimate force in directing what shall be produced by deciding what shall be consumed. Applying this test of supply and demand to the Board of Trade wheat prices for the ten normal years, 1905-1914, we find that *the daily prices do fluctuate in accordance with supply and demand factors.* The figures on which this conclusion is based are given in Appendix 2 and 3.

It is fair to conclude, therefore, that the fundamental economic functions of a market are performed by the Board of Trade of the City of Chicago. (p. 8.)

Does the future price control the cash price? Some experts on the grain trade claim that it does. And since the future price is made in the pit, largely under speculative trading,—the conclusion is also reached that the cash price is a mere football of speculation. It had already been stated in Chapter I that cash price reflects supply and demand condi-

tions. It may now be stated at this point, that *future price does not determine cash price.* (pp. 59, 60)

The conclusion seems warranted that neither future nor cash price has a dominating influence, permanently, over the other, but that both are merely effects of supply and demand causes. They are, in short, effects of the same underlying causes. (pp. 61-2)

Speculation and Price Fluctuations.—Men speculate because prices fluctuate. And if all the speculators in the world were dead, prices would still fluctuate. Yet how common is the belief that speculation is the cause of price fluctuation. This is indeed a strange confusing of cause and effect. (p. 120)

It seems fair to conclude, therefore, that *speculation in grain on the organized exchanges lessens price fluctuations.* (p. 124)

Some twenty-five years ago, at a large and representative meeting of farmers a resolution was passed condemning future trading in wheat on the grounds that future trading lowered the price of wheat. Three weeks after this meeting, 500 members of the National Association of American Millers met in convention at Minneapolis and passed a resolution condemning future trading on the grounds that it raised the price of wheat. Apparently self-interest colored the views of both these groups. The truth lies halfway between these extreme views, namely, *future trading (i. e., free, open, competitive speculation) registers that price where meet in temporary equilibrium the competing buyers and sellers, expressing the competing forces of supply and demand.* (p. 125)

An examination of these market fluctuations, and the reasons given therefor by the experienced market reporters, tend to confirm the statement *that the fluctuations are not artificial, but do reflect supply and demand.* (p. 127)

The underlying idea of manipulation is the deliberate and conscious influencing of price through dissimulation. A vigorous campaign of advertising may bear or bull a stock or a grain. Is this advertising manipulation? Not so long as it is free from deception and fraud. There must be some de-

ceit. Influencing the grain market by spreading false crop reports (easily done 50 years ago) is manipulation, and is of course forbidden by Board of Trade rules. Influencing the grain market by spreading true reports of crop damage is not manipulation. (p. 152)

Prices are stabilized near the supply and demand level. Wider swings of the market are greatly lessened in range. In place of the wide swings, there are many minor fluctuations reflecting very sensitively the pressure of changing supply and demand. * * * *Speculation does not fix prices, but registers prices.* The speculator—who names prices—is working under the laws of supply and demand—or he ceases to be a speculator and is eliminated from the market. The law of the survival of the fittest obtains in the pit. (pp. 179-180)

The pit is one market which is open to an unlimited number of traders any hour of any day, by the simple process of forwarding their orders to their brokers. *There is little room for doubt that should the organized grain exchanges be abolished (and particularly future trading) the grain trade would very rapidly be centralized in the hand of a few powerful houses.* They alone would be the buyers. *They would declare the margins on which the farmers' grain would be handled, as indeed they once did before the Exchanges were able to curb them.* * * * *But the speculators in the future market, numbered by the tens of thousands,* * * * *are too widely scattered and too independent to be controlled —so long as the market remains free and open to them.* (p. 181)

The trading on the floor of an organized exchange is, in letter and in spirit, *a great auction,* open to the whole world, where buyers and sellers in nearly equal numbers, make their bids and offers. * * * The one great preventive of monopoly in the grain trade is the organized exchange, with its rules of self-government actually made by the majority of small traders." (p. 182)

EXTRACTS FROM

Outlines of Economics.

By Richard T. Ely, Professor of Political Economy in the University of Wisconsin, and Thomas S. Adams, Professor of Political Economy in the Sheffield Scientific School of Yale University. The Macmillan Company, 1919. Pp. 622-624.

"Speculation.—The modern marketing or distributive mechanism not only relieves the producer of a large part of the speculative risk which attends the transmission of raw material from the farm to the consumer, and calls public attention to this speculative element by collecting or concentrating it, but it is responsible also for a large amount of unnecessary *speculation which many persons believe to be particularly injurious to the farmer. We are not here concerned with the general evils of speculation but with the prevalent belief that speculative dealing in futures tends to reduce prices.* 'What is generally urged is that the professional short seller, by his sales of fictitious wheat or cotton, creates a fictitious over-supply in the market, which is just as instrumental in depressing prices as would be an abnormally large supply of actual wheat thrown on the market by the farmer.' This charge is frequently supplemented by the assertion that it requires less money in margins to 'sell short'—or gamble on a fall in prices—than to 'sell long' in anticipation of a rise, and that, in consequence, the weight of the speculative dealing in farm products is exerted in the direction of lower prices.

This particular charge against speculation is confirmed neither by a priori reasoning nor by inductive analysis. Every 'fictitious' sale of wheat, to use that as an illustration, must be balanced by an equivalent 'fictitious' purchase. The 'bear' who sells October wheat in July, even though he may hope to depress the price of October 'futures,' exercises no harmful influence upon the actual July or 'spot' price, which is controlled by the demand for and supply of actual wheat; and when October comes, 'the short seller of

July appears now as a buyer in order to cover his contracts, and if his trading has any effect on the market at all, it is to increase the demand, not the supply.'

It is very plain that the fictitious market may be artificially influenced by speculative deals, but *as a general thing the fictitious market is ruled by the actual market, not vice versa;* and *the only influence exerted by gambling in futures upon 'spot' prices (with which alone the farmer is concerned) is a good influence. This influence arises out of the effect of future transactions in lessening price fluctuations and in modifying present use by anticipating future necessity.* * * *In no market are influences of this kind more accurately detected or more quickly dissipated by competitive forces than on the produce and cotton exchanges.

Actual investigations of prices confirm the theoretical argument made above. The average prices of spot wheat in September, October and November—just after harvest, when the ordinary farmer is compelled to sell—have been nearer the average price for the entire year, since the speculative wheat market has become highly organized, than in the forties and fifties when wheat was sold like any other farm product. And there are reasons for the belief that speculation has not only equalized yearly fluctuations, but that the leveling has been up, not down, in the interest of the farmer who is compelled to sell after harvest, as opposed to the wealthier miller or trader who in the past carried over a supply for the lean months."

EXTRACTS FROM

THE MARKETING OF FARM PRODUCTS.

By L. D. H. Weld, Ph. D., Professor of Business Administration in Sheffield Scientific School, Yale University. Formerly Chief of Division of Agricultural Economics, University of Minnesota.

MacMillan, Publishers, New York, 1916.

"Corners—In spite of the great volume of trading that takes place, it happens, except in extremely rare instances, that when any given delivery month arrives, those who have sold short in the speculative market have enough actual wheat to fulfill their contracts, and those who have bought long are ready to take delivery of the actual grain. Of course it is possible that the buyers may have bought up more wheat than the shorts can find to deliver, in which case it is said that they have cornered the market. Enough unexpected grain usually shows up at the last minute to make such a corner impossible, but if the actual grain is not at hand, the shorts are 'squeezed' and have to buy from those to whom they have contracts by paying over to those who have cornered the market the difference between the price they contracted to sell for, and the price which the manipu lators have brought about through their monopoly power The possibility of cornering a market depends on th quantity of grain available for delivery and the exten to which the 'bulls' have been able to buy this up.

The possibility of corners is of course one of the weak nesses of the speculative system, but, as suggested before successful ones are of extremely rare occurrence. Ther would be the same possibility of cornering the supply o actual wheat, if there were no system of future trading and the results would doubtless be more serious, becaus under the present system a corner affects seriously onl the price of the future, and that for only a short time o until the end of the delivery month. * * *

Normally, the price of wheat in the United States should increase between the fall of one year and the following spring and summer, owing to the cost of carrying in elevators. *Although the adjustment is never absolutely perfect, the results achieved through speculation are truly remarkable.* The following figures show the average monthly prices for the ten-year period 1901-10 of cash wheat at Chicago:

	Cents per bushel
July	93.1
August	92.1
September	92.7
October	92.3
November	91.1
December	93.3
January	91.2
February	93.5
March	92.8
April	92.3
May	95.6
June	95.7

From these figures it will be observed that the lowest average monthly price was 91.1 cents, and the highest, 95.7 cents, a total difference of only 4.6 cents. The prices do not increase evenly from month to month but it is indeed significant that the average prices of August, September, and October (months of heavy receipts in Chicago) were adjusted in such a way as to make it necessary for the price to be only 95.6 cents and 96.7 cents respectively in May and June. *The difference between the average September price and the average May price is only* 2.9 *cents—hardly enough to pay for carrying wheat in an elevator for nine months.* One interesting conclusion to be drawn from these figures is that a farmer would have obtained on the average 2.9 cents more per bushel if he had held his wheat each year until May instead of marketing it in September. This would not have been enough to pay for storage on the farm and to make up for shrinkage due to evaporation of moisture and imperfect storage facilities. *In other words, the farmer year in and year out obtains as much and more for his wheat by marketing in the fall as by holding until the following spring.* * * *

Speculation not only tends to level prices throughout the year, but it performs a most signal service in making price changes over short periods less abrupt. * * * The reasons for the relatively gradual fluctuations in the wheat and cotton markets, for example, are to be found in the tremendous pressure brought to bear on both sides of the market by speculators. The shorts, or bears, are always trying to depress the market; the longs, or bulls, are always trying to raise it. The unfortunate thing for either of these classes in realizing their desires is that sooner or later the short sellers have to become buyers, and the bulls, sellers. Speculative short sellers, for example, sell large quantities for future delivery, hoping to see the price go down; but the only way they can make any profit from a fall in price is to begin to cover, *i. e.*, to buy again, and their purchases tend to obstruct a further decline and possibly to cause the price to begin to rise again. Professional speculators are content with extremely small profits per transaction. Just as soon as the price begins to fall, there are shorts who begin to buy; and on the other hand, just as soon as the price begins to rise, there are bulls who begin to sell in order to take their profits. In other words, just as soon as the price begins to move in either direction, even by eighths of a cent (in the case of wheat), there are strong counteracting forces which hinder and often completely obstruct the price movement. As a consequence, extreme fluctuations in the price of those commodities which are dealt in speculatively are exceedingly rare under normal conditions, and this leveling influence is of great value to those engaged in merchandising the commodities. *In this connection, the fallacy that short selling has the effect of generally depressing prices should be mentioned,* but this has been treated so conclusively in other places that a detailed discussion is not necessary. Suffice it to say that the pressure from the bull side is just as great as from the bear side (in fact there are likely to be more bulls than bears if anything), and that the bears tend to defeat their own purpose by having to become buyers, as explained above. *Objections to speculation based on this time-worn argument appear to be decreasing.* * * *

The professional speculator performs an important function, and to drive him out of business would be to

destroy the continuous market for hedging operations, to derange the highly delicate machinery for recording opinions of traders, to lessen the pressure on prices from both above and below, and to restrict the interplay and competition between markets. These effects would throw greater risks on the actual merchandisers, and force them to take out larger margins to cover these risks. It is also probable that there would be a greater amount of speculation in the commodities themselves and a greater chance of manipulation on the part of the powerful financial interests."

EXTRACTS FROM

PRINCIPLES OF ECONOMICS.

By F. W. Taussig, The Henry Lee Professor of Economics in Harvard University.

Macmillan Co., Publishers, New York, 1915. Vol. 1. Pp. 159-161, 216.

"*The fundamental effect of speculation is to promote the establishment of the equilibrium of supply and demand.* It tends to make daily market prices conform to the seasonal market price, and to make the seasonal market price such that the whole seasonal supply is disposed of. * * *

* * * There will be fluctuations in price, some ups and downs, some unexpected gains and losses,—'speculative' profits or losses. *But the general effect of speculation is to lessen fluctuations, and promote the smooth course of exchange and consumption.*

This lessening of fluctuations is advantageous alike to the ultimate consumers, and to those manufacturers who in business parlance are often spoken of as the 'consumers' of a raw material. * * *

The good effect of speculation in this direction has been illustrated from the experiences of older days, when wide fluctuations in the price of food were common. Under modern conditions, with great areas of supply brought into competition by railways and steamships, abrupt changes in the supply of most

foodstuffs and raw materials are rare. * * * But under such conditions as existed under the limited geographical division of labor before the eighteenth century, great fluctuations were common. * * * We know very little of the details of what took place in these early days, and are prone to project into them ideas or conclusions based on our own experiences. But none the less it is probable that even in those times the influence of speculation was in the main to lessen fluctuations and promote the expedient rate of consumption. It is certain that this is its tendency under the modern conditions of wide markets, full information, active competition. * * *

Successful corners are rare. Usually those who attempt them underestimate the supply and overstrain their credit."

EXTRACTS FROM

ELEMENTARY PRINCIPLES OF ECONOMICS.

By Irving Fisher, Professor of Political Economy. Yale University. Macmillan Co., Publishers. New York 1913. Pages 338-343.

SPECULATION.

"We have spoken of the equalization of prices as between different places. We have next to consider equalization of prices as between different times. Corresponding to the tendency to the equalization of the prices of a given commodity between different places, that is, between the places where it is abundant and cheap and the places where it is scarce and dear, there exists a tendency to the equalization of the prices of a given commodity at different times. Moreover, the method of equalization of prices between times corresponds somewhat to the method of equalization of prices between different places. * * *

Just as the equalization of prices between places is largely due to the work of a special class of business men who engage in arbitrage transactions, so

the equalization of prices between different times is largely accomplished by a special class called speculators. * * *

Therefore speculation may do either good or harm. It does good when it reduces the inequality of prices at different times. It does harm when it aggravates this inequality. Fortunately, the interests of the speculator and the public are to a large extent identical. It is evident that when the speculator is correct in his prognostications, he will make a profit. His object is to make a profit when prices are rising, but he can do so only by mitigating the rise. Likewise his object is to make a profit when prices are falling, but he can do so only by mitigating the fall. His profits are, as it were, a reward paid him by the community for mitigating price changes. If he makes a mistake in either form of speculation, he suffers losses, and these losses may be regarded as a sort of penalty he suffers for aggravating the inequalities in prices. Since the interests of the speculator and of the public are thus parallel, there is a premium put on wise and beneficial speculation and a penalty on unwise and injurious speculation."

EXTRACTS FROM

PRINCIPLES OF ECONOMICS.

By Edwin R. W. Seligman, LL.D., McVickar Professor of Political Economy, Columbia University, Author of "The Economic Interpretation of History," etc. Longmans Green & Co., New York, 1905. Pages 363-365.

"The chief economic function of regular speculation consists in the assumption of risk and results in the equalization of price. * * *

It was to secure an escape from the risks of such oscillations that a special class arose which assumed this risk and by concentrated attention derived a profit from the price fluctuations. * * *

The first way in which risk is minimized for the ordinary business man and assumed by a regular speculative class is through the provision of a continuous open market. * * *

A natural and more recent outcome of this attempt to avoid risk is the practice of 'hedging' or 'covering' transactions. * * * Through the use of such wheat and cotton futures we thus have the paradoxical result that the business man often resorts to speculation in order to free his business from speculative influences.

The result of regular speculation, again, is to steady prices. * * * Speculation thus tends to equalize demand and supply, and by concentrating in the present the influences of the future it intensifies the normal factors and minimizes the market fluctuation. Speculation hence exerts a directive influence on price. A good example of this is afforded by the Gold Law during the civil war. The discount in greenbacks was mistakenly ascribed to the speculation on the gold exchange, and a law was enacted to prohibit all such transactions. As a result, the premium on gold jumped at once from 195 to 285, with wild fluctuations day by day, to be followed, after the hasty repeal of the law fifteen days later, by just as sudden a recession of the price."

EXTRACTS FROM

PRINCIPLES OF MARKETING.

By Paul Wesley Ivey, Ph. D., Professor of Marketing, University of Nebraska.

The Ronald Press, Publishers, New York, 1921. Pp. 308-309.

"*Speculation and Price Fluctuations.* * * * Strange to say, speculation has been accused of causing wide price fluctuations, and hence has been thought to depress business. *The truth is that under normal conditions speculation stabilizes price, while lack of speculation permits an erratic market.* * * * Under normal conditions, with free and complete speculation, it is difficult for the market price to fluctuate widely because it is to the advantage of either longs or shorts to return it to its former position. *Speculation thus produces market equilibrium.*

A study of grain prices from 1899 to 1916 substantiates the position taken. It indicates that the price fluctuations in those grains traded in on the future market were far less marked than was the case with grains for which no future market existed. Only once during this period did wheat show a fluctuation of over 100 per cent, and only twice did oats exhibit a fluctuation of this amount, while barley showed such a fluctuation eight times. *During a period of* 100 *years, before future trading was inaugurated, price fluctuations were twice as great as during the period since that date.*"

EXTRACTS FROM

AGRICULTURAL COMMERCE—THE ORGANIZATION OF AMERICAN COMMERCE IN AGRICULTURAL COMMODITIES.

By Grover G. Huebner, Ph.D., Assistant Professor of Transportation and Commerce, Wharton School of Finance and Commerce, University of Pennsylvania.

D. Appleton & Co., Publishers, New York and London, 1915. Pp. 160-162.

"EFFECT OF SPECULATION ON SPOT PRICES.

There are widely varying views as to the effect of speculation upon the price of spot produce. *Cotton and grain growers not infrequently contend that it depresses the prices which they receive.* This view is based mainly on the belief that as spot and future prices largely fluctuate in harmony, the sale of futures has the same effect as a large increase in the supply of grain or cotton. *The sale of futures, whether as a short sale or otherwise, does not, however, have such a depressing effect.* In the first place every short sale means also a purchase at the time and 'consequently against the depressing influence of the short sale there is the uplifting influence of the purchase, and the effect of the transaction on prices is determined by the relative character of the buying and selling and not by the mere fact that a sale has been made.' Second, every future is a valid

and binding contract. Every short sale, therefore, before or at the time when the contract matures, requires a purchase either of grain or cotton or of another future to offset the one that was sold. Third, '*this popular misconception of short selling overlooks the extremely important fact that influential speculators seldom undertake deliberately to contest natural conditions at least for any length of time.* Instead they frequently spend large sums of money in securing all possible information which may tend to influence prices. Instead of fighting natural conditions, the ordinary speculator is eager to ascertain correctly what the natural conditions are and what their probable influence will be, and then to shape his campaign in the market in accord with such information.' * * * Fourth, as was pointed out in a previous chapter, when futures sell at an abnormal discount, as they sometimes do in the cotton trade, the spot prices of the large markets refuse to follow the price of futures and the cotton buyers are economically compelled to readjust the limits which determine the growers' prices. Fifth, *statistics as well as common trade knowledge indicate that in the years when the volume of future sales is greatest spot prices are usually higher than when speculation is at low ebb.*

Sixth, the present effect of speculation upon farmers' prices is not to be judged by comparison with assumed prices such as might be paid if all the abuses of speculation were abolished and all its advantages were retained, but by comparison with the prices which would probably be paid if there were no speculation whatever. The widespread use of the future markets for hedging purposes makes it clear that if the selling of futures were everywhere abolished, grain and cotton buyers would endeavor to protect their trade profits by paying the farmers relatively lower prices.

While there are farmers who believe that speculation depresses spot prices, so there are some flour millers and cotton spinners who are equally positive that it has the opposite effect. They usually have in mind the 'corners' which sometimes occur in the speculative markets. * * * It is only a temporary 'squeeze' which lasts until the operators who sold short for delivery in that month settle at a much advanced price. It is an evil mainly because of its disturbing effect upon outstanding hedges. The speculative corner should not be con-

fused with an actual corner of spot grain or cotton. Such a corner would have far-reaching effects, but the grain and cotton crops of the United States and of the world have become so vast there is little likelihood of such a calamity. * * *

Speculation affects central market prices in that it tends to establish a proper price level earlier than it would otherwise be established. It moreover tends to steady spot prices. This steadying effect is not to be confused with the fact that future prices have in recent years fluctuated more violently and more frequently than spot prices. Spot prices are steadied by speculation in that without the tendency of the exchanges to constantly discount future conditions and their unusual efforts to obtain accurate trade information, they would break much more sharply between the harvesting seasons. The speculative exchanges likewise, as was previously pointed out, facilitate the establishment and maintenance of a world's price for cotton and the leading cereals."

EXTRACTS FROM

Marketing Agricultural Products.

By Benjamin Horace Hibbard, Ph.D., Professor of Agricultural Economics in the University of Wisconsin.

D. Appleton & Co., Publishers, New York and London, 1921. Pp. 152-154.

"It has been shown repeatedly that fluctuations in prices before the development of organized speculation were not only as violent as, but usually more violent than, they have been since that development. * * *

In the case of the wheat market, the records show fluctuations to have been greater before the time of exchanges than since. * * *

The second consideration is that of the fluctuations in the prices of products not sold for future delivery. Live stock comes to mind as the greatest example, and any one at all familiar with the market asks no statistical proof of the fact that fluctuations in the price of live stock are fully as violent as those in the grain trade.

The live stock fluctuations are deplorable, and some one may be to blame, but dealing in futures is not the explanation of the offense. Potatoes are as erratic in price as wheat could well be, or ever is. The same is true of wool and eggs. Mention should be made of barley, a cereal which until lately was not sold for future delivery. According to the critics of the future-trading system, barley should show a more stable record of prices than wheat or oats. On the contrary, it was much less stable.

Coming back to the logic of the case, we may say with safety that in an organized market speculation is two-sided, and whenever one side is overstimulated the tendency is strong, in fact virtually irresistible, for the other side to be so affected by the situation created as to come to the rescue. This does not mean that fluctuations may not progress to a very appreciable degree before being checked. On the contrary, speculators, being always apprehensive lest some influence should run away with the market and cause heavy losses, are likely to be, through their apprehension, the very cause of the danger feared. For example, a group of shorts, fearing a rise in the market, may bid a little high, and thereby alarm another group who will push prices still higher, until some calm bear starts the counter movement by offering so freely to sell as to start the price in the other direction. Thus, again, we come to the conclusion that so far as both facts and logic are concerned, there is a reason to believe that organized speculative markets exert a stabilizing influence on prices."

Oration of Lysias, One of the Ten Attic Orators Against the Grain Dealers.

(About 400 B. C.)

"1. Many have come to me, Judges, expressing surprise that I have entered an accusation in the Boulè against the corn dealers, and saying that you, even if you think them ever so guilty, nevertheless think that those who bring charges against them act as sycophants. Accordingly I first wish to show you why I was compelled to accuse them.

2. When the Prytanes reported them to the Boulè, feeling ran so high that some of the speakers said that without a trial they should be handed to the Eleven to be put to death. But I, thinking that it would be a terrible precedent for the Boulè to do this, rose and said that it seemed best to me to try the dealers by law, as I thought that if they had committed a capital crime you no less than we would decide justly, but if they had done nothing wrong they need not have died without a trial.

3. When the Boulè had agreed to this some tried to slander me, saying I made these speeches for the safety of the dealers. Before the Boulè, since the preliminary trial was before them, I made a practical defense. For while the rest were sitting still I got up and accused them, making it clear to all that I had not spoken in their behalf, but had been upholding the established laws.

4. I took up the matter on account of this, fearing the charges. And I think it base to stop until you have voted what you wish.

5. First stand up and tell me whether you are a metic? Yes. Are you a metic on condition of obeying the laws of the city or doing what you please? On condition of obeying. So you think to escape death if you transgress the laws of which the penalty is death? I do not. Tell me then whether you confess that you bought more than the fifty measures of corn which the law allows. I bought it, advised to do so by the officers.

6. If he can show, Judges, that there is a law which permits dealers to buy corn when ordered to do so by the officers, you must acquit them. If not, consign them to punishment. But we will show you the law which forbids any one in the city buying more than fifty measures of corn.

7. This, Judges, ought to end the accusation, since he admits that he bought corn which the law plainly forbids, and you have sworn to give judgment according to law. But that you may be convinced that they lied about the officers I must say something further about them.

8. Since they made the charges against them let us call the officers and question them. Four of them say they know nothing about the matter. Anytus says that last winter when corn was high and the dealers were outbidding and fighting against one another, he counseled

them to stop quarreling, thinking it was advantageous to you who buy from these that they should previously buy it as cheap as possible. For they can sell it not more than an abol dearer.

9. That he did not order them to buy the corn and store it up, but advised them not to fight with each other, I will prove by Anytus, and also that he said these words last year, and they have been proved guilty of engrossing corn this year.

10. You have heard that they did not buy the corn because they were advised to do so by the officers. And I think if they really are speaking the truth about the corn inspectors they will not be defending themselves, but accusing them. Ought they not to be punished for offences concerning which the law is expressly written—both those who do not obey and those who direct to do what is contrary to them?

11. But I do not think, Judges, that they will resort to this argument. Perhaps they will say, just as they did before the Boulè, that they did it out of good will to the city, that you might buy it as cheaply as possible. I will tell you the greatest and most evident proof they lied.

12. They ought, if they bought the corn for your benefit, to have sold it many days for the same price, until the supply ran out; but in truth they sold it at a drachma dearer, as if they were buying it up by the medinnus. I will prove this to you by witnesses.

13. I think it strange that when there is a tax to pay about which all men will know, they do not wish to do their share and plead poverty, but those offences for which the penalty is death, and in which it was for their interest to escape detection, they say they committed out of good will to you. You all know that it is the least fitting for them to make such a defence. For their interests and yours are entirely different. They gain most when some disaster has befallen the city and they sell the corn for a high price.

14. Thus when they see your misfortunes they are glad, so that they often hear of some before other people, and others they make up themselves; either the ships have been destroyed in the Pontus, or have been captured sailing by the Lacedemonians, or that the market is closed, or that the truces are about to be made void; and they have come to such a pitch of enmity (15) that

in these times they plot against you as though they were your enemies. When there chances to be the greatest need of corn they heap it up and refuse to sell, that we may not dispute about the price, but may think ourselves lucky if we manage to buy from them at any price whatever. So although there is peace we are besieged by these men.

16. Long ago the city came to have such an opinion of their evil doings and wickedness, that while for all the other trades you appointed clerks as inspectors, for this traffic alone you appointed corn inspectors; and from many of these you have taken heavy punishment, although they were citizens, because they were not able to stop these practices. Ought not, then, those doing this wrong to receive punishment at your hands when you have killed those not able to restrain it?

17. You ought to know that it is impossible to acquit them. For if you acquit those who confess to making a corner against the merchants you seem to plot against the merchants. If they made some other excuse no one would censure those acquitting them; for in such cases it is at your discretion to believe either way. But now if you set free those who confess that they have broken the law would you not seem to be doing a strange thing?

18. Remember, Judges, that you have already condemned many accused of this crime who brought forward witnesses, as you thought the assertions of the accusers more trustworthy. Would it not be strange if, judging those doing wrong, you were more desirous to take punishment from the guiltless?

19. I think, Judges, that it is plain to all, that cases against these men are of the most general interest to those in the city, that they may learn that you have some mind about them; for they will think if you condemn them that they must be more careful in future, whereas if you acquit them you will have voted them every opportunity of doing what they wish.

20. It is necessary to punish them, Judges, not only on account of the crimes which have been committed, but as a precedent for those that will be. For in that case they will only be just endurable. Remember that many in this business have been tried for their life. And so great are their profits from it that they prefer to run in danger of their life every day than to stop getting unlawful gain from you.

21. If they beseech you and entreat you you could not justly pity them, but rather have compassion on the citizens who have been dying with hunger on account of their knavery, and the merchants against whom they combined. These you will rejoice and make more jealous if you take punishment on the dealers. But if not, what opinion do you think they will have when they learn that you let off the retail dealers who themselves confess to plotting against the merchants?

22. I do not think I need say more. About other criminals you must be informed by the accuser, but about the knavery of these men you know everything. If you condemn them you take punishment from them and make corn cheaper; if you acquit them you make it dearer."

From—Select Orations of Lysias. Literally translated by Edward Roth and Others. David McKay, Publisher, Philadelphia. Pages 9-13.